

CITY OF TIGARD, OREGON

RESOLUTION NO. 04-66

A RESOLUTION OF THE TIGARD CITY COUNCIL APPROVING A PERSONAL SERVICE AGREEMENT WITH BRUCE A. LIEBOWITZ, PRO TEM MUNICIPAL COURT JUDGE

WHEREAS, Section 10 of the Tigard City Charter provides for the office of Municipal Judge and Chapter 2.16 of the Tigard Municipal Code provides for the office of Pro Tem Municipal Judge; and

WHEREAS, there is need for pro Tem judges to serve in the absence of the regular Municipal Judge; and

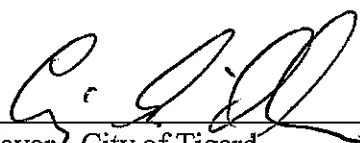
WHEREAS, Bruce A. Liebowitz previously served as Pro Tem Municipal Judge for the City of Tigard and the City was satisfied with his performance;

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1 A personal services contract is entered into by mutual agreement of the parties as set forth in the attached Exhibit "A". This contract will take effect September 15, 2004.


SECTION 2 This resolution is effective immediately upon passage.

PASSED: This 14th day of September 2004.



Mayor - City of Tigard

ATTEST:



Deputy City Recorder - City of Tigard



CITY OF TIGARD, OREGON
PERSONAL SERVICES AGREEMENT

THIS AGREEMENT made and entered into this day of September, 2004 by and between the CITY OF TIGARD, a municipal corporation of the State of Oregon, hereinafter called CITY, and Bruce Liebowitz, hereinafter called MUNICIPAL COURT JUDGE PRO TEM.

RECITALS

City has need for services, as defined in Tigard Municipal Code 2.16, of an individual with particular training, ability, knowledge, and experience, and

City has determined that Municipal Court Judge Pro Tem is qualified and capable of performing the professional services as City does hereinafter require, under those terms and conditions set forth below:

Therefore, the parties agree as follows:

SCOPE OF WORK

Municipal Court Judge Pro Tem shall perform the following personal services when the Municipal Judge is unable to perform his duties by reason of absence from the City, illness, vacation, disqualification as provided by ORS 221.347, or as specifically determined by the Administrative Services Manager:

- Preside over arraignments, trials, and hearings for the following case types: civil infractions, criminal cases, juvenile violations, traffic violations, and parking citations;

EFFECTIVE DATE AND DURATION

This Agreement shall become effective upon the day of September, 2004 and shall expire, unless otherwise terminated or extended, on the 30th of June, 2006. Compensation will be reviewed at the end of the 2004-2005 fiscal year to determine what adjustment is appropriate if any.

COMPENSATION

City agrees to pay Municipal Court Judge Pro Tem \$66.00 (sixty-six dollars) per hour for performance of those services described in this Agreement. Payment will be made based on Municipal Court Prot tem Judge's invoice, subject to the approval of the Administrative Services Manager.

Contact Information

All notices, bills, and payments shall be made in writing and may be given by personal delivery, mail, or fax. Payments may be delivered by personal delivery, mail, or electronic transfer. The following addresses and contacts shall be used to transmit notices, bills, payments, and other information:

Contact Manager for City:	Municipal Court Judge Pro Tem:
City of Tigard	Bruce Liebowitz
Attn: Nadine Robinson, Administrative Services Manager	522 S.W. 5 th , Ste. 1000
13125 SW Hall Blvd., Tigard, Oregon 97223	Portland, Oregon 97204
Phone: 503-639-4171 ext. 2481	Phone: 503-295-2996
Fax: 503-684-7297	Fax: 503-295-6344
Email Address: nadine@ci.tigard.or.us	Email Address: bruce@Liebowitzandassoc.com

MUNICIPAL COURT JUDGE PRO TEM AS INDEPENDENT CONTRACTOR

Municipal Court Judge Pro Tem acknowledges that for all purposes related to this Agreement, Municipal Court Judge Pro Tem is and shall be deemed to be an independent contractor as defined by ORS 670.600 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Municipal Court Judge Pro Tem is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Municipal Court Judge Pro Tem under the terms of this Agreement, to the full extent of any benefits or other remuneration Municipal Court Judge Pro Tem receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Municipal Court Judge Pro Tem or to a third party) as a result of said finding.

Municipal Court Judge Pro Tem acknowledges that for all purposes related to this Agreement, Municipal Court Judge Pro Tem is not an employee of the City as those terms are used in ORS 30.265.

PROFESSIONAL SERVICES

The CITY requires that services provided pursuant to this agreement shall be provided to the City by a service provider which does not represent clients on matters contrary to City interests. Further, Municipal Court Judge Pro Tem shall not engage services of an attorney and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to City interests.

Should the Municipal Court Judge Pro Tem represent clients on matters contrary to City interests or engage the services on an attorney and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to City interests, Municipal Court Judge Pro Tem shall consult with the appropriate City representative regarding the conflict.

After such consultation, the Municipal Court Judge Pro Tem shall have 30 days to eliminate the conflict to the satisfaction of the City. If such conflict is not eliminated within the specified time period, the agreement may be terminated pursuant to the termination clause in this agreement.

INDEMNIFICATION

City has relied upon the professional ability and training of Municipal Court Judge Pro Tem as a material inducement to enter into this Agreement. Municipal Court Judge Pro Tem warrants that all work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a Municipal Court Judge Pro Tem's work by City shall not operate as a waiver or release.

City will defend and indemnify Municipal Court Judge Pro Tem for all actions taken while Municipal Court Judge Pro Tem is performing within the scope and responsibilities of the Municipal Court Judge Pro Tem as provided in this agreement to the extent of the City's obligation pursuant to the Oregon Revised Statutes.

TERMINATION

The parties agree that any decision by either party to terminate this Agreement before the 30th of June, 2006 shall be accompanied by thirty (30) days written notice to the other party prior to the date termination would take effect. There shall be no penalty for early termination.

AGREEMENT MODIFICATIONS

Modifications to this Agreement are valid only if made in writing and signed by all parties.

OWNERSHIP OF WORK PRODUCT

City shall be the owner of and shall be entitled to possession of any and all work products of Municipal Court Judge Pro Tem which result from this Agreement, including any correspondence or pertinent data and information gathered by or computed by Municipal Court Judge Pro Tem prior to termination of this Agreement by Municipal Court Judge Pro Tem or upon completion of the work pursuant to this Agreement.

GOVERNING LAW

Municipal Court Judge Pro Tem shall comply with all applicable federal, state and local laws; and rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or disability. The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. All provisions required by ORS Chapter 279 to be included in a contract of this type are incorporated into this Agreement as though fully set forth herein. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

COMPLETE AGREEMENT

This Agreement constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor, by the signature of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Municipal Court Judge Pro Tem has executed this Agreement on the date hereinabove first written.

CITY OF TIGARD

By: Authorized City staff

Date

MUNICIPAL COURT JUDGE PRO TEM

By: Service Provider

Date